

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

Gulab Khan Vs. State of Rajasthan

S.B.CRIMINAL APPEAL NO.457/1987
against the judgment dt.20.11.87 passed by
the Special Judge, E.C.Act Cases, Jodhpur
in Sessions Case No.7/1985.

Date of Judgment: July 16, 2007

P R E S E N T

HON'BLE MR.JUSTICE DEO NARAYAN THANVI

Mr.S.K.Puniya, Amicus Curiae.
Mr.V.R.Mehta, Public Prosecutor.

BY THE COURT:

1. This appeal is directed against the judgment of the learned Special Judge, Essential Commodities Act Cases, Jodhpur dated 20.11.1987, whereby accused appellant Gulab Khan was convicted for the offence under Section 3/7 of the Essential Commodities Act, 1955, hereinafter referred-to as "the Act" and sentenced to three months' simple imprisonment and to pay a fine of Rs.200/- & in default, to further undergo fifteen days' S.I.

2. Learned Amicus Curiae appearing for the accused appellant, while relying upon the decision of this court in *Jai Singh vs. State of Rajasthan* with *Kanti Chand Jain vs. State of Rajasthan* reported in 2002(1)Cr.L.R.(Raj.) 324, has submitted that the accused is an old one of 85 years of age and, therefore, he may be released on probation.

3. I have gone through this judgment. Though the learned counsel has not been able to place the concerned Rajasthan Cement Control Order, 1974 and as to whether the said Order has been rescinded or not but this is a case of recovery of 61 bags of Cement for which the licence was necessary and out of which, 10 bags were of levy Cement. Looking to the age of the accused which according to the statement recorded during trial was 61 years in 1986 and now he must be more than 81 years of age and the fact that during trial, he has remained in custody for more than 24 hours, I think it proper that no justice will serve by sending him to jail after such a lapse of time. This appears to be adequate and special reason for imposing less sentence.

4. Consequently, the appeal is partly allowed. While maintaining the judgment of conviction awarded by the Special Judge, EC Act Cases, Jodhpur dated 20.11.1987, the order

passed by him regarding sentence to accused Gulab Khan is modified and instead of three months' S.I., he is sentenced to the period already undergone. However, the sentence of fine shall remain intact.

(DEO NARAYAN THANVI), J.

RANKAWAT JK, PS